



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 15, 2023

IN THE MATTER OF:

Appeal Board No. 628895

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 628893, 628894 and 628895, the claimant appeals from the decisions of the Administrative Law Judge filed March 31, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 12, 2021 through October 17, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,463 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right

to receive future benefits by 208 effective days and charging a civil penalty of \$1,269.45 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: In early 2021, the claimant was working for three employers, including this employer. After losing her employment with one of them, the claimant filed an original claim for benefits, effective March 22, 2021. Between April 12, 2021 and October 17, 2021, the claimant worked part-time with fluctuating hours as a customer sales associate for this employer for an hourly rate of pay. In this period, she worked two days per week in the three weeks ending June 13, 2021; August 8, 2021 and August 15, 2021. The claimant

also worked three days per week in the 20 weeks ending April 18, 2021 through June 6, 2021; June 27, 2021 through August 1, 2021; and August 22, 2021 through September 26, 2021. She also worked four or more days in the three weeks ending October 3, 2021 through October 17, 2021.

When the claimant certified for benefits for each week at issue, she was asked whether she worked. The question does not reference an employer and the claimant could not select one when she was answering it. For each week, she answered she worked zero days. The claimant received \$8,463 in regular unemployment insurance benefits.

OPINION: Having disregarded that portion of the testimony of the Commissioner of Labor's representative which was not subject to cross-examination, the remaining credible evidence establishes that the claimant worked during this period for various days as found above. The claimant does not dispute that she worked the number of days as contended. Accordingly, we conclude that the claimant was not totally unemployed on the days and in the weeks as stated in the initial determination.

The credible evidence establishes that when the claimant certified for benefits, she reported that she worked zero days. Each of these statements is factually false. Although the claimant contends that she answered zero days of work because she was no longer working at the employment which she had lost before filing the claim, the claimant concedes that the certification question neither identifies an employer nor could she select an employer when answering the question. The certification question is simple and straightforward, and it requires no specialized legal knowledge or expertise to answer accurately. See Appeal Board No. 627276; and Appeal Board No. 619060. Accordingly, we conclude that the claimant's false certifications constitute willful misrepresentations.

The credible evidence establishes that the claimant was overpaid \$8,463 in regular unemployment insurance benefits since she was ineligible to receive benefits. They are recoverable because of the above factually false statements. With a recoverable overpayment and even one willful misrepresentation, the forfeit and civil penalties were properly imposed. With even one willful misrepresentation, there was jurisdiction to issue the initial determinations.

Finally, in our review of the record, we are not persuaded by the contention in the claimant's closing statement that the Administrative Law Judge

prejudged this matter.

DECISION: The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 628893, 628894 and 628895, the initial determinations, holding the claimant ineligible to receive benefits, effective April 12, 2021 through October 17, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$8,463 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4);

and reducing the claimant's right to receive future benefits by 208 effective days and charging a civil penalty of \$1,269.45 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER